



June 18, 2002

Lieutenant Arturo Valdez  
Central Records Division  
City of McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2002-3301

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164413.

The McAllen Police Department (the "department") received a request for copies of forty-two offense reports. You state that the department has already released "front page" offense report information to the requestor. *See* Gov't Code § 552.108(c) (stating that basic information regarding crime is not excepted from disclosure under Gov't Code § 552.108; *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the department did not submit any responsive information to us pertaining to offense report numbers 00-26997 and 01-46942. We, therefore, presume that the department has already provided the requestor with this information to the extent that it exists. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that three offense reports that you submitted to us for review are not responsive to the request. Accordingly, we need not address whether offense report numbers 00-016729, 00-016730, and 00-046578 are subject to disclosure under the Public Information Act.

Section 552.108(a) of the Government Code provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the remaining information relates to cases in which the associated investigations are ongoing. However, we note that offense report number 96-029625 pertains to alleged criminal mischief that occurred on May 13, 1996, that offense report number 99-005020 pertains to alleged criminal mischief that occurred on February 11, 1999, that offense report number 00-004121 pertains to alleged criminal mischief that occurred on February 2, 2000, and that offense report number 00-011588 pertains to an alleged theft of property valued at less than \$50 that occurred on March 30, 2000. Although you state that these particular cases are still being investigated by the department, it appears that the statute of limitations has already run for all four cases. *See* Penal Code §§ 28.03, 31.03; *see also* Crim. Proc. Code, arts. 12.01, .02. You have not adequately explained how or why the release of the information pertaining to these particular cases "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Therefore, we conclude that the department may not withhold from disclosure any information pertaining to the four cases for which it appears that the statute of limitations has run under section 552.108 of the Government Code.

Furthermore, we note that two other offense reports reflect that the cases associated with those reports have been "closed." Thus, based on the conflicting information that you have provided to us regarding these two particular offense reports, we cannot find that the release of the information in those reports would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a). Accordingly, we conclude that the department may not withhold the remaining portions of offense report numbers 00-045898 and 00-046202 that have not already been released under section 552.108.

However, we find that the release of the remaining offense reports "would interfere with the detection, investigation, or prosecution of crime." *Id.* Accordingly, we conclude that the department may withhold from disclosure the remaining information in each of these offense reports that has not already been released pursuant to section 552.108(a)(1) of the Government Code.

We note that one of the records pertaining to the cases for which the statute of limitations has already run contains Texas motor vehicle information that is subject to section 552.130 of the Government Code. We also note that the two offense reports which reflect that the cases associated with those reports have been closed also contain such motor vehicle information. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, we conclude that the department must withhold from disclosure the Texas motor vehicle information in offense report numbers 00-004121, 00-045898, and 00-046202 that we have marked pursuant to section 552.130 of the Government Code.

We also note that offense report numbers 00-045898 and 00-046202 contain insurance policy numbers that are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 611 at 1 (1992). We note that prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy. See Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information), 523 (1989) (information related to individual's mortgage payments, assets, bills, and credit history excepted under the common law right to privacy). Based on our review of offense report numbers 00-045898 and 00-046202, we conclude that the department must withhold from disclosure the insurance policy numbers that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, the department must release offense report numbers 00-26997 and 01-46942 to the requestor to the extent that they exist and have not already been provided to the requestor. With the exception of offense report numbers 96-029625, 99-005020, 00-004121, 00-011588, 00-045898, and 00-046202, the department may withhold the remaining information that has not already been released from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department must withhold from disclosure the Texas motor vehicle information in offense report numbers 00-004121, 00-045898, and 00-046202 that we have marked pursuant to section 552.130 of the Government Code. The department must withhold from disclosure the insurance policy numbers that we have marked in offense report numbers 00-045898 and 00-046202 pursuant to section 552.101 of the Government Code in conjunction with the common-law right to

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law right to privacy.

privacy. The department must release the remaining portions of offense report numbers 96-029625, 99-005020, 00-004121, 00-011588, 00-045898, and 00-046202 that have not already been released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

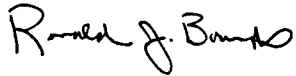
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 164413

Enc. Marked documents

cc: Mr. Damin Orozco  
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(w/o enclosures)